

Jayar Metal Finishing Corp. and Rosa Chevere and Local 113, National Organization of Industrial Trade Unions (Local 113, NOITU), Party to the Contract. Cases 29-CA-13147, 29-CA-13213-1, and 29-CA-13213-2

September 27, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On January 31, 1990, the National Labor Relations Board issued its Decision and Order in this case,¹ ordering the Respondent, Jayar Metal Finishing Corp., its officers, agents, successors, and assigns to make Rosa Chevere whole for any loss of earnings she may have suffered because of the Respondent's unfair labor practices. On June 22, 1990, the United States Court of Appeals for the Second Circuit entered a judgment enforcing the Board's Order.² A controversy having arisen over the amount of backpay due under the Board's Order as enforced, the Regional Director for Region 29 issued and served on the Respondent a backpay specification on February 27, 1991, alleging the amount of backpay due and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations.³

On August 20, 1991, the General Counsel filed with the Board a Motion for Summary Judgment Where Respondent Has Failed to File an Answer, with exhibits attached. In the motion, the General Counsel alleges that (1) the Respondent failed to file an answer to the backpay specification by March 20, 1991 (21 days after the issuance of the specification); (2) counsel for the General Counsel, by letter dated June 26, 1991, informed the Respondent that if an answer was not received within 7 days, the General Counsel might seek summary judgment from the Board; (3) although the Respondent's representative, Martin Mandel, notified counsel for the General Counsel by telephone that the Respondent had ceased operations, counsel for the General Counsel informed Mandel that the Respondent was still required to file an answer; and (4) by letter dated June 27, 1991, the Respondent informed counsel for the General Counsel that "Jayar was evicted and closed down March 11, 1991. The assets are owed to

secured creditors. There are no funds available to pay anything." The General Counsel further avers that although the Respondent has been served with copies of the Board's Decision and Order, the court of appeals' judgment, and the backpay specification, and has been put on notice of the requirement that it file an answer to the specification, no answer has been filed by or on behalf of the Respondent, and that the Respondent has not made any application for an extension of time to file an answer. The General Counsel alleges that, even if the Respondent's June 27 letter was intended to serve as an answer, it fails to serve that purpose because it does not "specifically admit, deny, or explain each and every allegation of the specification" as required by Section 102.56 of the Board's Rules and Regulations, but merely makes the unsupported claim that the Respondent has ceased operations and lacks funds to "pay anything." Accordingly, the General Counsel asserts that the Motion for Summary Judgment should be granted.

On August 23, 1991, the Board issued an order transferring this proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent did not file a response. The allegations of the motion thus are undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56 of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

¹ 297 NLRB 603.

² No. 90-4050 (unpublished).

³ The backpay specification notified the Respondent that: pursuant to Section 102.54 of the Board's Rules and Regulations, Respondent shall, within 21 days from the date of the Backpay Specification, file with the undersigned Regional Director, acting in this matter as agent of the Board, an original and four (4) copies of an answer to the Backpay Specification. To the extent that such answer fails to deny allegations in the Backpay Specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

We agree with the General Counsel that the Respondent's letter of June 27, 1991, does not conform to the Board's requirements concerning answers to backpay specifications.⁴ The letter fails to address any of the substantive allegations of the specification of

⁴ We therefore need not decide whether the Respondent's June 27 letter is, in fact, an answer to the specification.

The Respondent's assertion of inability to pay is irrelevant. The issue before us is the amount of backpay due, not whether the Respondent is able to pay. See, e.g., *Postmasters/Same Day Plus*, 295 NLRB 1169 (1989).

which the Respondent could be expected to have knowledge. It does not contest the backpay period, the backpay formula employed by the General Counsel, or any of the computations of gross or net backpay, nor does it attempt to explain its failure to do so. Accordingly, we find the allegations of the backpay specification to be admitted to be true as provided in Section 102.56(c), and we find that they are correct.⁵ We therefore grant the General Counsel's Motion for Summary Judgment.

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is granted, and that the Respondent, Jayar Metal Finishing Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall make Rosa Chevere whole for her losses caused by its discrimination against her by paying her \$7750.82 in net backpay, plus interest accrued to the date of payment, minus tax withholdings required by Federal and state laws.

⁵ We note that the portion of the backpay specification that sets forth the requirements for answering the specification refers, inadvertently, to Sec. 102.54, rather than 102.56, of the Board's Rules and Regulations. (See fn. 3, *supra*.) Although it is conceivable that the Respondent could have been misled by this error, the Respondent makes no such contention. Moreover, both the General Counsel's Motion for Summary Judgment and the Board's Notice to Show Cause refer to Sec. 102.56, and the Respondent failed to file a response to either the motion or the notice. We find, therefore, that the Respondent has not been prejudiced by the error in the backpay specification.